IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.488 OF 2007

In the matter of M/s.
Molecular Diagnostic Pvt.Ltd.

M/s.Seragene Diagnostic
Pvt. Ltd. .. Petitioners.

Mrs.Lambay i/b Lambay & Co. for the petitioners.
None for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 13TH SEPTEMBER, 2007.

P.C.:

. Heard learned counsel for the petitioners.

2. The petitioners are a company carrying out business of providing diagnostic services having their laboratories at Kothari Compound, Opp.Tikunji-ni-wadi, Chitalsar, Manpada, Thane (West). The respondent-company was also engaged in the business of providing diagnostic services. It appears that an agreement dated 1st February, 2003 was entered into between the petitioner company and respondent-company. It was interalia agreed by the respondent-company to use the furnished laboratory of the petitioner at Kothari Compound, Thane from 1st November, 2002 on monthly hire charges of Rs.4,00,000/- on the terms and conditions set out in the agreement which is annexed to the petition at Exhibit-A. The agreement was for the term of 36

months. The company committed defaults in payment of the dues of the petitioners. In view thereof some correspondence was exchanged between the petitioner and respondent-company. A letter dated 22nd December, 2003 issued by the respondents to the petitioners so also the further correspondence prima facie show that they accepted the entire liability. The particulars of claim show that till this date an amount of Rs.76,84,695/- without interest is due. Since this amount had not been paid to the petitioners, they issued a statutory notice under sections 433 and 434 of the Companies Act on 17th October, 2006 to the respondent-company at its registered office. The notice was duly served to the respondent-company but they did not respond to the notice. Hence the petitioners have filed this company petition for winding up. The company petition has been duly served on the company. The respondent-company has chosen not to appear in the petition and file reply affidavit. The circumstances show that the debt is due and payable.

3. However, in order furnish the respondent with an opportunity to avoid the consequences of the admission of the petition for winding up, it would be appropriate to pass a conditional order permitting the respondent to deposit the principal amount of

Rs.76,84,695/-. Thereupon, the petitioner would be relegated to the remedy of filing a suit for the recovery of its dues together with interest and the amount so deposited would be credited to the account of the suit. Hence, the following order:

(i) Within a period of 4 months from the date of this order, the respondent shall deposit with the Prothonotary & Senior Master of this Court, an amount of Rs.76,84,695/-;

(ii) The petitioner is at liberty to file a suit before a competent court for the recovery of the monthly hire charges of the diagnostic laboratory at Kothari Compound, Thane. The petitioner would be at liberty to institute a suit for the recovery of its dues within four months of intimation of deposit furnished by counsel for the respondent;

(iii) The amount deposited shall upon the institution of the suit stand transferred to the credit of the account of the suit;

(iv) The amount upon being transferred to the credit of the suit account shall be invested by the Prothonotary & Senior Master in a fixed deposit of a Nationalised Bank. The petitioner will be at liberty

to move the court for directions in regard to the money which is deposited;

(v) In the event, that the Respondent fails to deposit the amount as directed, the company petition shall stand admitted. In that event the petitioner to advertise the petition in "Free Press Journal", "Nav Shakti" and also in Maharashtra Government Gazette. The petitioner to deposit Rs.10,000/- with the Prothonotary and Senior Master towards publication charges.

(vi) If no suit is instituted by the petitioner within the period stipulated, the respondent would be at liberty to apply for discharge of the security.

vii) Notice under Rule 28 of the Company (Court) Rules be issued to the respondent-company. In addition thereto the petitioner to give notice to the respondent-company intimating them about the admission of company petition within a period of four weeks from today.

4. The company petition is accordingly disposed of in the above terms.

(D.B.BHOSALE, J.)